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HOUSE BILL 62

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Antonio Lujan

AN ACT

RELATING TO WORKERS' COMPENSATION; REMOVING THE EXCLUSION FROM THE WORKERS' COMPENSATION ACT REQUIREMENTS FOR EMPLOYERS OF FARM AND RANCH LABORERS IF THE EMPLOYER EMPLOYS THREE OR MORE EMPLOYEES; PROVIDING AN AFFIRMATIVE ELECTION TO EXCLUDE FAMILY MEMBER EMPLOYEES IN A FAMILY FARMING BUSINESS FROM THE PROVISIONS OF THE WORKERS' COMPENSATION ACT; PROVIDING FOR REVOCATION OF AFFIRMATIVE ELECTIONS TO EXCLUDE CERTAIN EMPLOYEES FROM THAT ACT; CLARIFYING DETERMINATION OF NUMBER OF EMPLOYEES OF A FAMILY FARMING BUSINESS; DEFINING TERMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-6 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 4) is amended to read:

"52-1-6. APPLICATION OF PROVISIONS OF ACT.--

A. The provisions of the Workers' Compensation Act

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1 shall apply to employers of three or more workers; provided  
2 that act shall apply to all employers engaged in activities  
3 required to be licensed under the provisions of the  
4 Construction Industries Licensing Act regardless of the number  
5 of employees. The provisions of the Workers' Compensation Act  
6 shall not apply to employers of private domestic servants [~~and~~  
7 ~~farm and ranch laborers~~].

8 B. An election to be subject to the Workers'  
9 Compensation Act by employers of private domestic servants [~~or~~  
10 ~~farm and ranch laborers~~], by persons for whom the services of  
11 qualified real estate salespersons are performed or by a  
12 partner or self-employed person may be made by filing, in the  
13 office of the director, either a sworn statement to the effect  
14 that the employer accepts the provisions of the Workers'  
15 Compensation Act or an insurance or security undertaking as  
16 required by Section 52-1-4 NMSA 1978.

17 C. Every worker shall be conclusively presumed to  
18 have accepted the provisions of the Workers' Compensation Act  
19 if [~~his~~] the worker's employer is subject to the provisions of  
20 that act and has complied with its requirements, including  
21 insurance.

22 D. [~~Such~~] Compliance with the provisions of the  
23 Workers' Compensation Act, including the provisions for  
24 insurance, shall be [~~and construed to be~~] a surrender by the  
25 employer and the worker of their rights to any other method,

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1 form or amount of compensation or determination thereof or to  
2 any cause of action at law, suit in equity or statutory or  
3 common-law right to remedy or proceeding whatever for or on  
4 account of personal injuries or death of the worker other than  
5 ~~[as]~~ those actions, suits or rights provided in the Workers'  
6 Compensation Act and shall be an acceptance of all of the  
7 provisions of the Workers' Compensation Act and shall bind the  
8 worker ~~[himself]~~ and, for compensation for ~~[his]~~ the worker's  
9 death, shall bind ~~[his]~~ the worker's personal representative,  
10 ~~[his]~~ surviving spouse and next of kin, as well as the employer  
11 and those conducting ~~[his]~~ the employer's business during  
12 bankruptcy or insolvency.

13 E. The Workers' Compensation Act provides exclusive  
14 remedies. No cause of action outside the Workers' Compensation  
15 Act shall be brought by an employee or dependent against the  
16 employer or ~~[his]~~ the employer's representative, including the  
17 insurer, guarantor or surety of any employer, for any matter  
18 relating to the occurrence of or payment for any injury or  
19 death covered by the Workers' Compensation Act. Nothing in the  
20 Workers' Compensation Act, however, shall affect ~~[or be~~  
21 ~~construed to affect]~~ in any way, the existence of or the mode  
22 of trial of any claim or cause of action that the worker has  
23 against any person other than ~~[his]~~ the worker's employer or  
24 another employee of ~~[his]~~ the worker's employer, including a  
25 management or supervisory employee, or the insurer, guarantor

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1 or surety of ~~[his]~~ the worker's employer."

2 Section 2. Section 52-1-7 NMSA 1978 (being Laws 1975,  
3 Chapter 284, Section 4, as amended) is amended to read:

4 "52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN  
5 EXECUTIVE EMPLOYEES, ~~[OR]~~ SOLE PROPRIETORS OR FAMILY MEMBER  
6 EMPLOYEES OF A FAMILY FARMING BUSINESS.--

7 A. Notwithstanding any provisions to the contrary in  
8 the Workers' Compensation Act, an executive employee of a  
9 professional or business corporation or limited liability  
10 company, employed by the professional or business corporation  
11 or limited liability company as a worker as defined in the  
12 Workers' Compensation Act, or a sole proprietor may  
13 affirmatively elect not to accept the provisions of the  
14 Workers' Compensation Act.

15 B. Notwithstanding any provisions to the contrary in  
16 the Workers' Compensation Act, the employer of a family member  
17 employee in a family farming business may affirmatively elect  
18 not to accept the provisions of the Workers' Compensation Act  
19 for the family member employee.

20 ~~[B.—Each]~~ C. An executive employee, ~~[or]~~ sole  
21 proprietor or employer of a family member employee of a family  
22 farming business desiring to affirmatively elect not to accept  
23 the provisions of the Workers' Compensation Act as permitted in  
24 Subsection A or B of this section may do so by filing an  
25 election in the office of the director. An employer of a

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1 family member employee of a family farming business shall  
2 deliver a copy of the affirmative election made pursuant to  
3 this section to the family member employee for whom the  
4 affirmative election is made.

5 ~~[G.—Each]~~ D. An executive employee, [or] sole  
6 proprietor or employer of a family member employee of a family  
7 farming business desiring to revoke ~~[his]~~ an affirmative  
8 election made pursuant to this section not to accept the  
9 provisions of the Workers' Compensation Act may do so by filing  
10 a revocation of the affirmative election with the workers'  
11 compensation insurer and in the office of the director. The  
12 revocation shall become effective thirty days after filing. An  
13 executive employee shall cause a copy of the revocation to be  
14 mailed to the board of directors of the professional or  
15 business corporation or limited liability company. An employer  
16 of a family member employee of a family farming business shall  
17 deliver a copy of the revocation of the affirmative election  
18 made pursuant to this section to the family member employee for  
19 whom the affirmative election was made.

20 ~~[D.—]~~ E. The filing of an affirmative election not to  
21 accept the provisions of the Workers' Compensation Act shall  
22 create a conclusive presumption that an executive employee,  
23 ~~[or]~~ sole proprietor or family member employee of a family  
24 farming business is not covered by the Workers' Compensation  
25 Act until the effective date of a revocation filed pursuant to

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1 this section. The filing of an affirmative election not to  
2 accept the provisions of the Workers' Compensation Act shall  
3 apply to all corporations or limited liability companies in  
4 which the executive employee has a financial interest.

5 ~~[E.]~~ F. In determining the number of workers of an  
6 employer to determine who comes within the Workers'  
7 Compensation Act, an executive employee who has filed an  
8 affirmative election not to be subject to the Workers'  
9 Compensation Act shall be counted for determining the number of  
10 workers employed by ~~[such]~~ the employer.

11 G. In determining the number of workers of an  
12 employer to determine who comes within the Workers'  
13 Compensation Act, a family member employee of a family farming  
14 business shall not be counted by the employer.

15 ~~[F.]~~ H. For purposes of this section:

16 (1) "executive employee" means the ~~[chairman]~~  
17 chair of the board, president, vice president, secretary,  
18 treasurer or other executive officer, if ~~[he]~~ that person owns  
19 ten percent or more of the outstanding stock, of the  
20 professional or business corporation or a ten percent ownership  
21 interest in the limited liability company; ~~[and]~~

22 (2) "family farming business" means a sole  
23 proprietorship, partnership, limited liability company or  
24 corporation in which all of the partners, members or  
25 shareholders are related within the third degree by blood or

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1 marriage and where the business cultivates the land for the  
2 production of agricultural crops, fruit or other horticultural  
3 products or the business is for the ownership, keeping or  
4 feeding of animals for the production of livestock or livestock  
5 products;

6 (3) "family member employee" means a spouse of  
7 an employer or an employee related to the employer within the  
8 third degree by blood or marriage;

9 (4) "related within the third degree by blood or  
10 marriage" means related to the third degree of consanguinity or  
11 affinity and includes parents, grandparents, great-  
12 grandparents, children, grandchildren, great-grandchildren,  
13 brothers, sisters, uncles, aunts, nephews, nieces and spouses;  
14 and

15 [~~2~~] (5) "sole proprietor" means a single  
16 individual who owns all the assets of a business, is solely  
17 liable for its debts and employs in the business no person  
18 other than [~~himself~~] that individual."

19 Section 3. REPEAL.--Section 52-1-6.1 NMSA 1978 (being  
20 Laws 1984, Chapter 127, Section 988.3) is repealed.